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# File No. O. Charities/41

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KAN/5-6.
2 c.

Office of the R.L.A.

From the Rules of the East Khandesh District Village Improvement Association, Jalgaon, it is clear that it is an unincorporated association started to carry out the programme of rural development in the district by voluntary contributions and donations. The object being beneficial to the rural community, the association is clearly a public institution administering a charity (Tudor on Charity p. 8). A charity established or supported by voluntary contributions stands in the same position as any other charity so long as there is a fund or property impressed with a charitable trust. If there is it is immaterial whether the source of it is the subscription of a number of people or the donation of one (Ibid pp. 57-58). There is no provision in the Rules of the Association either for the transfer of the fund or for the dissolution of the Association. As the association is a public institution administering charity, it cannot divest itself of the funds or delegate its trust with a view to discharge itself from the office of trustee save by an order of the Court. The constitutions of the two bodies being different and the funds of the District Village Improvement Association, East Khandesh, being impressed with a charitable trust, they could not be legally transferred to the District Rural Development Board, save under an order of the Court. The lawful course in this case appears to be to file a suit under section 92 of the Code of Civil Procedure, 1908, to obtain the direction of the Court for the transfer of the fund to the District Rural Development Board and for the discharge of the Association from its office as trustee (cf. R.L.A's opinion No. 9266, dated 19th October 1940).

Sd/- P.M.M.
Remembrancer of Legal Affairs.

KAN/5-6.
4 c.

U.S. to R.D., No.1113 dated the 7th February 1941.

Office of the R.L.A.

The questions referred to the R.L.A for his opinion are whether the Government can give an undertaking on the lines mentioned in H.E.S a note at page 54 and whether the Government can properly bind its successors by such an undertaking.

2. The history of the origin and development of the Elphinstone High School will be found in the Memorandum dated August 1866 at page 157 of E. D. Vol. I of 1868. It ~~xxxx~~ shows that the Bombay Native Education Society was conducting a High School called the Central High School out of the income of a fund called the Institution Fund and out of a Government grant.' In 1827 there was a movement "with a view to secure to the community a means of becoming acquainted with the English language and the arts, sciences and literature of Europe. This movement took the shape of a meeting held in honour of the retiring Governor Mr. Mount Stuart Elphinstone." About two lakhs of rupees were subscribed and that amount was handed over by the subscribers to the Bombay Native Education Society. That Society then intended to establish another institution named the Elphinstone College of Bombay, but that was subsequently pronounced to be premature. The name of the school was thereafter proposed to be changed to be called the Elphinstone College School, but afterwards it was ~~xx~~ altered to Elphinstone Native Education Institution. Ultimately the Elphinstone College was started and the school was called the Elphinstone High School. In the beginning both the institutions were managed by the

Society out of the income of the Institution funds and from Government grants. Gradually, the Government grants increased considerably and the Government came to the conclusion that the institutions were in effect state institutions for which the Government received material assistance from funds bequeathed by private society. The Government therefore desired that the trustees of the funds should remain no more than mere custodians to recover and pay the proceeds to Government for expenditure on the institutions. There appear to have been prolonged negotiations and the result was the Trust Deed of 16-4-1869 by which the Government acquired the complete control and manggement of these two institutions and the trustees remained mere custodians of the funds and paid their income into the Government treasury, the Government undertaking to spend the same for the objects for which it was intended, namely, these two institutions.

3. It is thus obvious from the above facts that in taking over the above two institutions the Government took them upon a trust to perpetuate the memory of Elphinstone as was intended by the original founders. It is therefore not open to the Government to change the name of the institutions. The Court can, of course, sanction such a change if the Court is satisfied about the necessity and utility of such a change. But the Court would be very reluctant to do so unless there were very cogent reasons.

4. The Government can however give an undertaking to Sir Chunilal Mehta on the lines hereafter indicated in para.5 below. Such an undertaking does not bind the Government to change the name; nor does it hold out any

promise that the Government can change the name. It need not mention the reasons for the desire of the Government in future to change the name.

5. The undertaking may be on the following lines;

"If at any future time, the Government desires to and can change the name of the Elphinstone High School, the Government agrees to consult Sir Chunilal Mehta or his heirs with a view to adopting a new name which will perpetuate the memory which Sir Chunilal Mehta desires."

Such ~~xxxxxxx~~ an undertaking will bind the successors of the Government and the Government can properly (legally) bind its successors by such an undertaking.

Sd/- P.N.M.

Remembrancer of Legal Affairs.

U. R. to C. D. No.1267, dated 10th February 1941.

KAN/5-6.
4 c.

Legal Department.

By her will, the late Miss Kamalavei P. Mangaldas bequeathed the residue of her estate (after payment of legacies etc.) to the Imperial Bank of India on trust to hold the same, or the proceeds thereof duly invested in investments permitted by law, upon trust to establish scholarships as detailed in the will and in accordance with a scheme to be framed by the Government of Bombay in the Educational Department with the approval of the Bank and subject to the High Court. The property thus demised in trust comprises Government securities and shares of joint stock companies. The will requires that the Bank should hold the capital in trust, and should pay the interest from time to time. The capital moreover, is to be repaid by the Bank, to the niece of the testatrix under the will in case of the failure of the trust. Therefore the Bank is not in a position to apply under section 6, and Government cannot pass orders vesting the capital in the Treasurer of Charitable Endowments under section 4, of the Charitable Endowments Act, 1890.

2. The second question raised is whether there is any legal objection to accepting the Bank's proposal that the present investment of the trust fund should not be disturbed. It is true that part of the trust fund stands invested in shares of joint stock companies which are not trustee securities; but these shares, it appears, formed part of the original estate, and the will expressly gives the Bank the power to postpone the sale and conversion of stock indefinitely without being responsible for the loss. Consequently there is no legal objection to the course proposed by the Bank.

3. The third question is as to the scheme to be framed and the procedure to be followed therein. It will be necessary to obtain ~~xxxxxx~~ sanction of the High Court to the scheme which is to be framed, and such sanction will have to be obtained in a suit under section 92 of the Code of Civil Procedure, 1908, to be filed

by Government and the Bank against the Advocate General. Once the scheme is sanctioned it will have to be adhered to in all its details, however inconvenient or unworkable it is found to be in practice, unless it is amended by the Court. The best cour... ... this case would be to have a workable scheme which complies with the terms of the will, and which leaves enough discretion in detail to the authority constituted under the scheme to administer it. E.D. may therefore request the Bank to get a draft scheme prepared by its attorneys in accordance with the provisions of the will and forward it to Government who may then scrutinise it. After the scheme is agreed upon between the Bank and Government it will be submitted to the Advocate General for his approval and then a ~~suit~~ suit under section 92 of the Code of Civil Procedure, 1908, can be filed as stated above.

Sd/- 17/5

Solicitor to Government.

U.R. to E.D. No. 4614, dated the 19th May 1911.

KAN/5-6.
4 c.

Office of the R.L.A.

Under the Indenture dated 16th April 1869, the Secretary of State covenanted declared and agreed that the interest of, inter alia, the Elphinstone Institute Fund "shall be expended under the control of the Director of Public Instruction", on theobject of the Fund as recited in the Schedule to the Indenture, namely the expenses of the Elphinstone High School. Government no desire to convert the present Elphinstone High School into a Technical High School, and it is presumed that conversion is to be achieved without radically altering the character of the school as a High School. Government propose to entrust the management of the Technical High School to the Director of Industries, but since the expenditure has to be incurred under the control of the Director of Public Instruction, the question referred to the R.L.A. is whether the account procedure indicated in para.3 of G.D. officers note at page 23 ante would carry out the stipulation covenanted in the Indenture. The answer is in the affirmative. The proposed account procedure retains the technical control of the Director of Public Instruction over the expenditure, while in practice it delegates to the Director of Industries the general management of the Technical High School. There is no legal objection to this procedure, but in order to emphasise the technical control of the Director of Public Instruction it would be advisable to lay down also that all periodic reports regarding the institution should be submitted throu the Director of Public Instruction.

Sd/- P.N. Moos :20/5
Remembrancer of Legal Affairs.

U.O. to G.D. No.4589, dated 20th May 1941.

KAN/5-6.
4 c.

Statement of the case for the opinion of the Advocate General.

In the memo. dated 19-3-1863, the Hon'ble Mr.R.J.Jeejeebhoy proposed to offer a sum of one lakh of rupees in G.P. paper to be held by Govt. in trust for the purpose of establishing new schools at Damaun, Bulsar, Billimore and Navsari and for enlarging and increasing the efficiency of the Bombay Central School in Connection with the Sir Jamsetjee Jeejeebhoy Parsee Benevolent Institution, and requested to know whether Government would be willing to give a grant-in-aid to the extent of Rs.5,000/- a year an amount equal to the income of the endowment. The said memo. was forwarded to the D.P.I. for his opinion. From para. 5 of the report of the D.P.I. No.1573 dated 1-4-1863, it will be evident that Damaun being in the Portuguese territory, the D.P.I. did not take into consideration the establishment of a School at Damaun. The estimated total expenditure of Rs.7,000/- arrived at by the D.P.I. shows that a school at Damaun was not taken into consideration. And this fact is further clear from the letter of Hon'ble Mr.J.J.Jeejeebhoy dated 1-5-1863 approving the terms proposed by the D.P.I. and the letter of the Bom.Govt. to the Govt. of India No.5 dated 13-5-1863. In the Govt. of India Resolution (F.D.), No.2913 dated 2-7-1863, the Govt. of India authorised "a fixed grant of Rs.3500/- per annum in aid of the schools proposed to be founded in British Territory by the Hon'ble Mustoonjee Jamsetjee Jeejeebhoy." A copy of the extract from the

proceedings of the Govt. of India was forwarded to Hon'ble Mr.J.J.Jeejeebhoy along with E.D. letter No.448 dated 21-6-1863." From item No.51 of the Account of Educational Endowments Funds of 1922, it is clear that "Damaun being in Portuguese Territory was, on the advice of Govt. separately treated, and R.30,000 or R.1800/- per annum on the donation were set apart for the school at that place. The balance of R.70,000/- was accepted by Govt. letter, E.D. No.449 dated 26-6-1863, which also promised a fixed grant equal to the interest of the endowment or R.3500/- per annum in aid of the Schools proposed to be founded by the Hon'ble Rustomjee J.Jeejeebhoy etc." See also item No.51 of the List of Permanent Educational Endowment Funds.

2. The E.D. office states that the donation of R.70,000/- was converted from 5% to 3½% loan in 1902 with the result that instead of an amount of R.3500/- as provided in the original trust of 1863, an amount of R.2520/- only is spent on the Schools in the British Territory. The question for the H.L.A's consideration is whether in view of the fact that on account of the conversion of the loan the income from the endowment fund has been reduced to R.2520/- it is legally open to Govt. to make a corresponding reduction in the grant of R.3500/- promised by Govt.

3. The answer to the question depends on the interpretation of the correspondence passed between the Hon'ble Mr.R.J.Jeejeebhoy and Govt. when the donation was made in 1863. There in

no question of any trust in this case. Govt. was offered the donation on the condition that it would make a yearly contribution. The correspondence is in the nature of a contract and the question is whether under the terms of the contract Govt. can reduce the amount of the contribution which it agreed to make. In order that a contract may be binding and enforceable against Govt. it must be made in accordance with the provisions of the law in force on the date on which it was made. (See Municipal Corporation of Bombay Vs. Secretary of State 36 B.L.R.368, Krishnaji Vs. Secretary of State 39 B.L.R.807 and Secretary of State Vs. Bhagwandas Govardhandas 40 Bll.R.19 ). Under section 11 of the Govt. of India Act, 1858 (22 and 23 Vict.41) which was in force in 1863 when the correspondence in this case took place, in order that a contract might be enforceable against the Secretary of State in in Council, it was necessary that the Secretary of State in Council should be named as a party to the deed, contract or the instrument and that such deed, contract or instrument should be expressed to be executed on behalf of the Secretary of State in Council. There was no such contract made in this case. There is, therefore, no valid contract in law which can be enforced against Govt. But Govt. has accepted from Mr. Jeejeebhoy the donation of ~~Rs.~~ 70,000/- on the terms agreed upon between him and Govt. It cannot retain this donation and at the same time refuse to

contribute the amount which it agreed to grant. It appears from the correspondence between Mr.Jeejeebhoy and Govt. that although the Hon'ble Mr.Jeejeebhoy originally by his Lr.No. dated 10th March 1863 asked for a contribution equal to the amount of the income on the donation offered by him, Govt. finally accepted the donation on the condition that it would pay a fixed grant of Rs.350/- per annum. This is clear from the Govt. of India Resolution No.2913 dated the 2nd July 1863 which was forwarded to Mr.Jeejeebhoy along with the E.D. letter No.148 dated 24th August 1863. Consequently, in my opinion, it is not competent to Govt. now to reduce the amount of the contribution on the ground that the income from the amount of the donation is less than Rs.350/-. As the point is not quite free from doubt, the Advocate General is requested to be so good as to express his opinion on the point at issue.

sd/- P.B. Moos

Remembrancer of Legal Affairs.

U.O. to the Advocate General No.8464 dated 26th September 1911.

KAH/5-6.
4 c.

By the terms of the Resolution dated the 2nd of July 1863 Government were pleased "to authorise a fixed grant of Rs. 3,500/- per annum in aid of the schools proposed to be founded in British territory by the Honourable Rustomjee Jamsetjee Jeejeebhoy". No doubt the correspondence preceding the Resolution shows that the sum of Rs. 3,500/- was arrived at on the basis that Government were contributing an amount equal to the yearly income from the Government Paper which then amounted to Rs. 3,5..- That however was the reason or motive for Government authorising the grant. By the terms of the Resolution what was authorised was not a sum equivalent to the yearly income of the Government Paper but a fixed grant of Rs. 3,500/- per annum.

2. This Resolution was communicated to the donor and it was on the faith of the terms of that resolution that the donor handed over the Government Paper to Government.

3. It is therefore clear that in so far as the matter rests on an interpretation of the terms of the Resolution, Government are not entitled to reduce the amount of the grant on the ground that the income of the Government Paper has now diminished. If by reason of a change of circumstances the income of the Government Paper had increased, instead of being diminished, Government would not have been bound, having regard to the terms of the Resolution, to make a larger grant than Rs. 3,500/-

4. Apart from the question of the interpretation of the Resolution, Government may be able to contend that, in so far as the payment of the grant is concerned, they are not in the position of trustees. Government may further be able to contend that there is in law no binding contract which obliges them to pay the sum of Rs. 3,500/- per annum as and by way of grant. Though the position is not entirely free from doubt, Government could, I think, therefore, successfully contend that as a matter of law

they are not bound to pay the sum of Rs. 3,500/- as and by way grant.

5. It is for Government to consider whether they should take up such a position, based entirely on the legal aspect of the matter and contrary to the true interpretation of the Resolution, on the faith of which the donee was induced to make the donation.

Sd/- M.C. Setalvad 13-10-41

Advocate General.

KAN/5-C.
4 c.

Office of the R.L.A.

The Advocate General was consulted in this case. A copy of his opinion together with the statement of the case is sent herewith.

Sd/- P.N. Moos

Remembrancer of Legal Affairs.

U.O. to C.D. No.9206 dated the 25th October 1941.

EAB/5-6.
4 c.